

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 37

APPEAL

(b) When an Appeal Lies.—An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction:

(1) upon a plea of not guilty; or

(2) upon a plea of guilty or nolo contendere if:

(i) the defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the state and of the court the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met: (A) the judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, must contain a statement of the certified question of law reserved by defendant for appellate review; (B) the question of law must be stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved; (C) the judgment or document must reflect that the certified question was expressly reserved with the consent of the state and the trial judge; and (D) the judgment or document must reflect that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case; or

(ii) the defendant seeks review of the sentence set and there was no plea agreement under Rule 11(e); or

(iii) the error(s) complained of were not waived as a matter of law by the plea of guilty or nolo contendere, or otherwise waived, and if such errors are apparent from the record of the proceedings already had; or

(iv) the defendant explicitly reserved with the consent of the court the right to appeal a

certified question of law that is dispositive of the case, and the requirements of subsection (i) are met, except the judgment or document need not reflect the state's consent to the appeal or the state's opinion that the question is dispositive.

Advisory Commission Comment

The amendments to subsections (b)(2)(i) and (iv) specify the requirements for certified question appeals mandated by the Tennessee Supreme Court in *State v. Preston*, 759 S.W.2d 647 (Tenn. 1988).